

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

**ITA No.599/Bang/2021**

**Assessment Year :2018-19**

M/s. Karnataka State Electronics Development Corporation Ltd., 2 <sup>nd</sup> Floor, TTMC “A” Block, BMTc, Shanthinagar, K. H. Road, Bengaluru-560 027. <b>PAN : AABCK 6661 P</b>	Vs.	The Deputy Commissioner of Income Tax, CPC, Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. Raghavendra R Chakravarthy, CA
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.03.2022
Date of Pronouncement	:	11.03.2022

**ORDER**

***Per N. V. Vasudevan, Vice President :***

This is an appeal filed by the assessee against order dated 15.09.2021 of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2018-19. Grounds of appeal raised by the assessee reads as follows:

- 1. The order of learned Commissioner of Income Tax (Appeals) is opposed to law and facts of the case.*
- 2. The learned CIT(A) has erred in not considering the claim of deduction of amount received from employees contribution to PF u/s 36(1)(va) on the ground that the payment of employees contribution to PF was made beyond the due dates prescribed u/s 36(1)(va).*

3. *The learned CIT(A) has also erred in not following the decision of Karnataka High Court in the case of CIT Vs. Sabari Enterprises (2008) 298 ITR 141 where High Court has held that the payments deposited before the due date of filing return should be considered as allowable expenditure u/s 36(1)(va) of Income Tax Act, 1961. The Learned CIT(A) has erred in relying the decision of Gujarat High Court in the case of CIT vs. Gujarat State Road Transport Corporation reported in 366 ITR 170 when the jurisdictional ITO judgment is binding on the assessee and department.*
4. *The learned CIT(A) has erred in relying on the amendment made in section 36(1)(va) though the said amendment is applicable from the AY 2021-22 and onwards. In the recent Judgment by Hyderabad Income Tax Appellate Tribunal in the case of **Salzgitter Hydraulics (P) Limited (order dated 15.06.2021)** and in the case of Value Momentum Software Services Private Limited (order dated 19.05.2021) it has been held that the amended provisions of section 36(1)(va) has no application since this amendment is applicable from 01.04.2021 onwards and it is further held that it should be understood that the legislature itself has condoned the impugned default before 01.04.2021. Further, in the recent Judgments of Income Tax Appellate Tribunal, Bangalore in the case of M/s Nirmal Enviro Solutions Private Limited (order dated 12.10.2021), M/s The Continental Restaurant & Café Co. (order dated 11.10.2021) and Shri. Gopala Krishna Aswini Kumar (order dated 13.10.2021) have held that amendment made in section 36(1)(va) is applicable only with effect from 01.04.2021.*
5. *The learned CIT(A) has erred treating award received from Government of Karnataka as taxable income though such receipt of award is exempt u/s 10(17A).*
6. *The AO has not given the credit of TDS deducted by the Karnataka High Court of Rs. 96,654/-. AO should be directed to give credit of TDS as per form 16A.*
7. *With these and such other grounds that might be urged at the time of hearing the appellant prays for the relief sought for.*

2. Ground Nos.1 and 7 raised by the assessee are general grounds which do not require any specific adjudication. As far as ground Nos.2 and 4 are concerned, the same relates to disallowance of ESI & PF contribution being employees' share of contribution under section 36(1)(va) of the Income Tax Act, 1961 (hereinafter called 'the Act'). In an intimation dated 24.12.2019 issued u/s.143(1) of the Act, the Centralized Processing Centre (CPC) added a sum of Rs.15,76,290/- representing employees' share of contribution to ESI to the extent not paid on or before the due date as mentioned in Sec 36(1)(va) of the Income Tax Act 1961.

3. It was the case of the assessee that employees' share of ESI has been paid before the due date for filing of return u/s.139(1) of the Act (this fact is not in dispute) and hence has been considered allowable on the basis of decision of Supreme Court in CIT vs. Alom Extrusions Ltd (2009) 319 ITR 306 (SC) and other cases such as CIT Vs Magus Customers Dialog (P) Ltd (Kar), CIT Vs Sabri Enterprises (2008) 298 ITR 141 (Kar), Consultants India P Ltd Vs CIT Bangalore III (2013) 597/34 Taxman.com 20 (Kar).

4. With regard to employee's share of contribution to PF and ESI, the CIT(A) referred to the amendment made to section 36(1)(va) and 43B of the Act by the Finance Act, 2021. The Finance Act, 2021 has amended section 36, sub-section (1), in clause (va), by inserting Explanation-2 which reads thus:

"Explanation 2.—For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause;".

The finance Act, 2021 also amended section 43B by inserting Explanation-5 thereto which reads thus:

"Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be

deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 applies."

According to the CIT(A), by virtue of newly inserted Explanation 2 to clause (va) of sub-section (1) of the said section, the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under the said clause. The CIT(A) also held that Section 43B of the Income-tax Act relates to allowing certain deductions only on actual payments. Clause (b) of the said section provides that any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year, in which such sum is actually paid by him. Proviso to the said section provides that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return. By virtue of insertion of Explanation 5 to this section, the provisions of the said section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of subclause (x) of clause (24) of section 2 applies.

5. The CIT(A) was of the view that Section 36(1)(va) and section 43B(b) operate on totally different footings and have different parameters for due dates, i.e., employee's contribution is linked to

payment before the due dates specified in the respective Acts or Funds and employer's contribution is linked to the payment before the prescribed due date for filing of return u/s.139(1) Income Tax Act, 1961. The result of any failure to pay within the prescribed dates also leads to different results. In the case of employee's contribution, any failure to pay within the prescribed due date under the respective PF Act or Scheme will result in negating employer's claim for deduction permanently forever u/s.36(1)(va). On the other hand, delay in payment of employer's contribution is visited with deferment of deduction on payment basis u/s.43B and is therefore not lost totally. This legal distinction between employees' contribution and employer's contribution under the Act was duly recognised by the Courts also. The CIT(A) in this regard referred to the following judicial pronouncement wherein the aforesaid distinction has been accepted viz., CIT v. Gujarat State Road Transport Corpn. [2014] 41 taxmann.com 100/ 366 ITR 170/223 Taxman 398 (Guj.), Popular Vehicles & Services Pvt Ltd v. CIT [2018] 96 taxmann.com 13/257 Taxman 120/406 ITR (Ker), CIT Vs. Bharat Hotels 410 ITR 417 (Delhi).

6. The CIT(A), thereafter held that the amendment to section 36(1)(va) by insertion of explanation 2 and the amendment to section 43B by insertion to explanation 5 by the Finance Bill 2021 was only declaratory / clarificatory in nature and there therefore was applicable with retrospective effect by necessary intendment of deeming nature expressly stated therein. The CIT(A) upheld the addition made by the AO.

7. We find that identical issue has been considered in the following decisions:

*M/s Mahadev Cold Storage vs Jurisdictional AO - ITA.No.41 & 42/Agra/2021*

*M/s Essae Teraoka (P.) Ltd vs DCIT - [2014] 43 taxmann.com 33 (Karnataka)*

*Anand Kumar Jain vs ITO - ITA NO 4192/MUM/2012*

*ValueMomentum Software Services Private Limited vs. DCIT I.T.A. No. 2197/HYD/2017 [Assessment Year: 2013-14] dated 19.05.2021*

*Mohan Ram Chaudhary vs. ITO ITA No. 51&54-55/Jodh/2021 [Assessment Year: 2018-19] dated 28.09.2021*

8. The Hon'ble Karnataka High Court in the case of Essae Teraoka Pvt. Ltd., (supra) has taken the view that employee's contribution under section 36(1)(va) of the Act would also be covered under section 43B of the Act and therefore if the share of the employee's share of contribution is made on or before due date for furnishing the return of income under section 139(1) of the Act, then the assessee would be entitled to claim deduction. Therefore, the issue is covered by the decision of the Hon'ble Karnataka High Court. In this case there is no dispute that the assessee made payment of the Employees share of PF/ESI on or before the due date for filing return of income for AY 2017-18 u/s.139(1) of the Act. The next aspect to be considered is whether the amendment to the provisions to section 43B and 36(1)(va) of the Act by the Finance Act, 2021, has to be construed as retrospective and applicable for the period prior to 01.04.2021 also. On this aspect, we find that the explanatory memorandum to the Finance Act, 2021 proposing amendment in section 36(1)(va) as well as section 43B is applicable only from 01.04.2021. These provisions impose a liability on an assessee and therefore cannot be construed as applicable with retrospective effect unless the legislature specifically says so. In the decisions referred to by us in the earlier paragraph of this order on identical issue the tribunal has taken a view that the aforesaid amendment is

applicable only prospectively i.e., from 1.4.2021. We are therefore of the view that the impugned additions made under section 36(1)(va) of the Act, deserves to be deleted.

9. The learned DR submitted that in the event of Hon'ble Supreme Court taking a view as taken by the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation, the Revenue shall be at liberty to seek rectification. The prayer so made is accepted, subject to statutory limitations, if any and ground Nos.2 to 4 are accordingly allowed.

10. As far as ground No.5 raised by the assessee is concerned, the assessee received a sum of Rs.3,75,000/- from the Government of Karnataka. The Karnataka Government, with a view to promote efficiency of public enterprises in Karnataka and to encourage pay dividends regularly to the Government, announced an award called "Chief Minister's Annual Ratna Award". The reason why it was conferred on the assessee, as per the proceedings of the Government of Karnataka, Department of Public Enterprise, dated 02.04.2016, is as follows:

*"To promote and encourage the performance of the public enterprises and to select the public enterprises for Chief Minister's Annual Rathna Award. Selection Committee Meeting was held on 14-12-2016 and 26-12-2016 under the Chairmanship of Principal Secretary to Government, Department of Public Enterprises. The selection committee decided to comply with the following criteria for selecting the enterprises for the award.*

- a) There must be sustained profits over the past three financial years.*
- b) There should be no cumulative loss.*
- c) Dividends should have been paid to the Government.*

d) *Significant CSR activities should have been undertaken each year.*

*Considering the enterprises that have successfully fulfilled most of the above conditions, the following four enterprises have been selected for the prestigious Chief Minister's Annual Rathna award for the year 2016-17 with a cash prize of Rs. 3.75 lakhs per enterprise.*

1. *Karnataka State Seeds Corporation Limited*
2. *Karnataka Silk Industries Corporation Limited*
3. *Karnataka Soaps and Detergents Limited*
4. *Karnataka State Electronics Development Corporation Limited*

*Hence, the following order.”*

11. The assessee claimed a sum of Rs.3,75,000/- received from Government of Karnataka as exemption under section 10(17A) of the Act.

12. In an intimation issued under section 143(1) of the Act dated 24.12.2019, the claim for exemption was denied. On appeal by the assessee, the First Appellate Authority confirmed the order of the AO for the reason that the assessee failed to furnish details with regard to award given by Government of Karnataka.

13. We have heard the rival submissions.

14. From perusal of the proceedings of the Government of Karnataka dated 29.12.2016, it is clear that the award was given for the criteria of earning sustained profits. For 3 Financial Years, dividends should be paid to the Government and significant CSIR activities should have been undertaken each year. The requirements of section 10(17A) of the Act are that award should have been instituted in public interest by Central Government or State

Government. The criteria for exemption under section 10(17A) of the Act is therefore public interest which is absent in the present case and therefore we confirm the order of the CIT(A).

15. As far as ground No.6 is concerned, the credit for TDS was denied because of the mismatch in Form 26AS. From a perusal of ground No.6, it appears that the assessee has a physical TDS certificate as per Form 16A. The CBDT in its instruction No.5/2013 dated 08.07.2013 has taken a view that when physical certificates are produced, credit should be given in the absence of details in the Form. Mismatch in Form 26AS should not be a ground for denying credit on TDS. We therefore remand the issue to the AO for taking cognizance of Form 16A and give credit for TDS in accordance with law.

16. In the result, the appeal of the assessee is partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(B. R. BASKARAN)**  
**Accountant Member**

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.

Dated: 11.03.2022.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.